

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F305555

ROBERTA BURKE, Employee	CLAIMANT
ONE DOLLAR SHOPS, INC., Employer	RESPONDENT
BERKLEY RISK ADMINISTRATORS, Carrier	RESPONDENT

OPINION FILED OCTOBER 31, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On October 1, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 6, 2003, and a pre-hearing order was filed on August 11, 2003. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The respondent has controverted this claim in its entirety.

At the hearing the parties also agreed to stipulate that prior to March 15, 2003 the claimant earned an average weekly wage of \$290.00 and that after March 15, 2003, her average weekly wage equaled \$400.00.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to both hands.
2. Medical.

3. Temporary total disability benefits from April 25, 2003 through a date yet to be determined.

4. Attorney fee.

The claimant contends that she sustained a compensable injury to her hands and is entitled to medical, temporary total disability, and an attorney fee.

The respondents contend the claimant did not sustain an injury arising out of or in the scope of her employment as defined by the Arkansas Workers' Compensation Act.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 6, 2003, and contained in the pre-hearing order filed August 11, 2003, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$290.00 prior to March 15, 2003 and an average weekly wage of \$400.00 after March 15, 2003, is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her hands as a result of her employment with the respondent.

FACTUAL BACKGROUND

The claimant began working for the respondent as a sales clerk and stocker on August 23, 2002. The respondent is a retail store which sells items for one dollar. The

claimant testified that her primary job duties required her to operate a cash register to check out customers and stock product on the shelves.

Claimant testified that on January 1, 2003, she was working at the cash register bagging product when she heard a pop in the thumb area of her left hand. Claimant testified that at some point she reported this problem to Angela Knott, her supervisor. Claimant continued working for respondent as an employee until approximately March 15, 2003 when she was promoted to a management position. As a manager, claimant testified that she was still responsible for checking out customers and stocking product.

On April 21, 2003, the claimant sought treatment from the emergency room at the Northwest Medical Center in Springdale. Claimant also sought treatment from Dr. Bailey on April 24, 2003. Shortly after this visit to Dr. Bailey the claimant was demoted from her management position back to a regular employee. Claimant testified that because her hours were being cut she voluntarily terminated her employment with respondent. Claimant also contends that sometime after she first sought medical treatment she also developed pain in her right hand. Claimant has been diagnosed as suffering from bilateral deQuervain's. Claimant has filed this claim contending that her deQuervain's is a compensable injury causally related to her job activities with the respondent. She seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

The claimant contends that her problems with her left hand began when she heard a pop in her left thumb area on January 1, 2003. Claimant's testimony would constitute an injury caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be

shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

In addition, claimant also seems to contend that her job activities subsequent to January 1, 2003 caused her deQuervain's syndrome in her left hand and she also contends that her employment activities with the respondent caused the deQuervain's with regard to her right hand. In order to establish a compensable gradual onset injury to either or both of her hands, claimant has the burden of proving by a preponderance of the evidence that she suffered an injury (1) which arose out of and in the course of her employment, (2) which caused internal or external physical harm to her body which required medical treatment or resulted in disability, (3) which was caused by rapid, repetitive motion, and (4) which was the major cause of her disability or need for medical treatment. *Hapney v. Rheem Manufacturing Company*, 342 Ark. 11, 26 S.W. 3d 777 (2000). In addition, claimant must offer medical evidence supported by objective findings establishing her injury. *Aeroquip, Inc. v. Tilley*, 59 Ark. App. 163, 954 S.W. 2d 305 (1997); *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W. 2d 472 (1997).

Here, after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to either of her hands, whether those injuries are considered gradual or the result of a specific incident.

In order to be compensable for either a specific incident identifiable by time and place of occurrence or a gradual onset injury, claimant has the burden of offering medical evidence supported by objective findings establishing an injury. Here, claimant initially sought medical treatment from the emergency room at Northwest Medical Center on April 21, 2003. At that time, claimant was diagnosed as suffering from deQuervain's on the left side. Claimant subsequently sought medical treatment from Dr. Donald Bailey whose medical report dated April 24, 2003, indicates that claimant has bilateral deQuervain's. He indicates that the deQuervain's is acute on the left and is in its early stages on the right. Dr. Bailey subsequently authored a letter dated July 14, 2003 indicating that claimant's deQuervain's disease is also known as tendinitis. While the emergency room physician and Dr. Bailey have diagnosed claimant's condition as deQuervain's disease, there are no objective findings supporting that diagnosis.

A similar circumstance arose in *Lora Ruminer v. Sparks Regional Medical Center*, Full Commission Opinion filed October 27, 2003 (F102488). In that particular case, the claimant had suffered a compensable injury to her left knee. Claimant was also diagnosed as suffering from Morton's neuroma in her right foot. As a result, claimant filed a claim contending that the Morton's neuroma was causally related to her compensable knee injury. The Full Commission affirmed the administrative law judge's decision finding that claimant had failed to establish "Morton's neuroma" in her right foot with objective medical findings. While the Commission acknowledged that claimant's treating physician in that case had diagnosed claimant as suffering from a neuroma, the Commission also noted that there was no objective evidence supporting this diagnosis.

Similarly, in this particular case, claimant's physicians have diagnosed claimant as suffering from deQuervain's disease. However, a review of the medical records presented into evidence does not reveal any objective findings supporting this diagnosis. Absent objective findings establishing an injury, claimant has failed to meet her burden of proving

by a preponderance of the evidence that she suffered a compensable injury.

Furthermore, even if claimant had offered objective evidence of an injury, I would nevertheless find that she has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with the respondent. While claimant testified that her left hand problems began when she felt a pop in her thumb area on January 1, 2003, Angela Knott testified that claimant did not relate any work-related hand problems to her. Knott testified that some time in January claimant stated that her left wrist was hurting, but indicated that she did not know why. Knott testified that they concluded during their conversation that maybe the claimant had slept on her wrist wrong. The evidence indicates that claimant continued working for respondent until April 21, 2003, and that she missed no work, did not request medical treatment, and did not request workers' compensation benefits. Furthermore, with respondent to claimant's right wrist pain, I note that claimant testified at the hearing that her right hand did not begin hurting until approximately one week after she first sought medical treatment. The record indicates that after claimant's initial medical treatment on April 21, 2003, she only worked a few more days. I also believe it is important to note that claimant testified that her right wrist condition has worsened since she is no longer working.

Accordingly, for the foregoing reasons, even if claimant had offered objective medical evidence establishing an injury, I would nevertheless find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to either hand while employed by the respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to either of her hands while employed by the respondent. Therefore,

her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE